

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

- - -

NOKIA CORPORATION,) Civil Action
)
Plaintiff,)
)
v.)
)
APPLE INC.,)
)
Defendant.) No. 09-791-GMS

- - -

APPLE INC.,)
)
Counterclaim-)
Plaintiff,)
)
v.)
)
NOKIA CORPORATION and NOKIA,)
INC.,)
)
Counterclaim-)
Defendants.)

- - -

Wilmington, Delaware
Thursday, June 3, 2010
10:00 a.m.
Teleconference

- - -

APPEARANCES:

JACK B. BLUMENFELD, ESQ.
Morris, Nichols, Arsht & Tunnell LLP
-and-
PATRICK J. FLINN, ESQ., and
MARK A. McCARTY, ESQ.
Alston & Bird
(Atlanta, GA)

Counsel for Nokia

1 APPEARANCES CONTINUED:

2
3 DAVID E. MOORE, ESQ.
Potter Anderson & Corroon LLP
4 -and-
WILLIAM F. LEE, ESQ., and
MICHELLE D. MILLER, ESQ.
5 (Boston, MA)

6 Counsel for Apple

7 - - -

8
9 THE COURT: Good afternoon, counsel

10 (Counsel respond "Good afternoon.")

11 THE COURT: Counsel, could we do a roll call for
12 the record, beginning with plaintiff?

13 MR. BLUMENFELD: Your Honor, this is Jack
14 Blumenfeld for the Nokia parties, along with Patrick Flinn
15 and Mark McCarty from Alston & Bird.

16 THE COURT: Good afternoon.

17 MR. FLINN: Good afternoon.

18 MR. MOORE: On behalf of the defendant Apple,
19 Your Honor, it is Dave Moore at Potter Anderson. With me on
20 the line are Bill Lee and Michelle Miller from WilmerHale.

21 THE COURT: Good afternoon.

22 MR. LEE: Good afternoon, Your Honor.

23 THE COURT: Counsel, as you know, I had previous
24 plans to have you come back, I think, but in the press of
25 business and just scheduling challenges, I thought it better

1 to proceed in the manner I am about to, via the vehicle of
2 teleconference.

3 I want to do two things today.

4 I am going to announce my decision regarding
5 Nokia's motion docketed at Item 25 to dismiss. I am going
6 to read the ruling into the record. I will endeavor at some
7 point to memorialize this, but don't hold your breath while
8 that is happening.

9 But we are on the record. I will go into some
10 detail, not perhaps as much as I will if I am able to issue
11 a more formal ruling in writing.

12 Then I am going to want to revisit the schedule
13 that has been entered upon in this case, to discuss a fairly
14 discrete issue, that is, the positioning and treatment, or
15 perhaps repositioning and treatment of the contract versus
16 the patent issues in the case.

17 So, counsel, I will now rule on Nokia's motion
18 to dismiss Apple's nonpatent counterclaims (Counts I through
19 VI) for failure to state a claim pursuant to Rule 12(b)(6)
20 of the Federal Rules of Civil Procedure.

21 For the record, this motion is docketed as
22 DI-25.

23 The Court will deny without comment Nokia's
24 motion with respect to Counts I, II, IV, V, and VI - the
25 breach of contract, promissory estoppel, and declaratory

1 relief claims.

2 The Court will also deny Nokia's motion to
3 dismiss Apple's Count III, an antitrust claim for
4 monopolization under Section 2 of the Sherman Act.

5 Given that the overwhelming majority of the
6 parties' briefs were devoted to this monopolization claim,
7 the Court will now take a few moments to state its
8 reasoning.

9 Both parties discuss at some length the Third
10 Circuit's decision in Broadcom v. Qualcomm. Broadcom
11 provides in clear terms the general framework under which
12 courts should analyze a motion to dismiss a claim brought
13 under Section 2 of the Sherman Act where the claimant is
14 alleging that the defendant engaged in anticompetitive
15 conduct during a standards-setting process. Specifically,
16 the Court in Broadcom held that the following elements, if
17 established, are sufficient to state a monopolization claim
18 under Section 2:

19 (1) in a consensus-oriented private standard-
20 setting environment, (2) a patentholder's
21 intentionally false promise to license essential
22 proprietary technology on FRAND terms, (3) coupled
23 with an SSO's -- standard-setting organization's --
24 reliance on that promise when including the technology
25 in a standard and (4) the patentholder's subsequent

1 breach of that promise is actionable anticompetitive
2 conduct.

3 Apple will ultimately have to establish each of
4 the four elements listed in Broadcom in order to prevail on
5 its monopolization claim. At the stage in the proceedings,
6 however, the question is not whether Apple has shown enough
7 to prevail on this claim, but, rather, whether its
8 counterclaim complaint sufficiently pleads this claim.

9 While the Supreme Court's rulings in Twombly and
10 Iqbal raised the bar for surviving a motion to dismiss
11 somewhat, federal courts still operate under a notice
12 pleading system. Under Twombly and Iqbal, as long as the
13 plaintiff alleges enough facts to make his or her claim
14 plausible on its face, a motion to dismiss must be denied.

15 Put another way, and this is a quote from Iqbal:
16 "A claim has facial plausibility when the pleaded factual
17 content allows the Court to draw the reasonable inference
18 that the defendant is liable for the misconduct alleged."

19 Apple's counterclaim complaint easily passes
20 this test with respect to the monopolization claim. Nokia
21 argues that the allegations in Apple's complaint are
22 "conclusory" and "inconsistent." The Court does not agree.
23 Numerous paragraphs in the counterclaims plead facts that if
24 proven would support a finding that Nokia violated Section 2
25 of the Sherman Act. For instance, Paragraph 53 of the

1 counterclaims state that, "In order to ensure incorporation
2 into the standard and to avoid the SSO's consideration of
3 the cost of standardizing patent technology, Nokia
4 deliberately and deceptively did not disclose during the
5 standard-setting-process IPR [intellectual property
6 rights] that it now claims are essential to the standard.
7 In fact, in many cases, a named inventor on the concealed
8 patent application participated in the relevant working
9 group and championed Nokia's technical proposal. Nokia
10 disclosed its IPR only after the relevant standard was
11 finalized."

12 In other paragraphs, Apple alleges specific
13 disclosures and nondisclosures that Nokia made during the
14 standards-setting process and the commitments Nokia made to
15 license its technologies on RAND or FRAND terms. In
16 Paragraph 71, 72, 83 and 84, among others, Apple alleges
17 that it relied on Nokia's FRAND and RAND commitments. Later
18 paragraphs in the complaint detail the ways in which Nokia
19 allegedly broke its promise to license its technologies.
20 For instance, Paragraphs 88 and 89 allege that Nokia
21 demanded cross-licensing of a number of Apple patents that
22 Apple alleges were not standards-essential. Paragraphs 90
23 and 91 allege that Nokia demanded excessive royalties,
24 specifically, royalties that were approximately three times
25 as much as earlier proposed royalties. These are just a few

1 examples of specific factual allegations in the complaint
2 that support a plausible claim for monopolization.

3 It is true that it might have been possible for
4 Apple to be even more specific in its complaint. Apple did
5 not, for instance, allege the specific dollar amounts and
6 royalties that Nokia demanded. Apple did not specify the
7 exact patents to which Nokia demanded licenses and why those
8 patents were not standard-essential. But neither the Third
9 Circuit nor the Supreme Court require such specificity at
10 the pleading stage. It is always possible for a complaint,
11 it seems to me, to be more specific or extensive in
12 specifying the conduct allegedly giving rise to a claim.
13 The mere fact that greater specificity is possible does not,
14 however, render a complaint insufficient. The facts alleged
15 in Apple's counterclaims are sufficient to create a
16 reasonable inference that Nokia engaged in conduct that
17 violated Section 2 of the Sherman Act. That is all that is
18 required to survive a motion to dismiss.

19 As to Nokia's allegation that Apple was
20 "inconsistent" in its assertions regarding whether the ten
21 Nokia asserted patents were essential, the Court agrees with
22 Apple that this misapprehends the legitimate practice of
23 alternative meaning. Nokia's complaint repeatedly asserts
24 that the asserted patents are essential. As Apple correctly
25 asserts in its brief, "Apple is entitled to premise its

1 counterclaims on those allegations and to argue, in the
2 alternative, that if the patents are essential, Nokia
3 wrongfully acquired and abused its monopoly power in the
4 markets for the technologies covered by the patents."

5 In short, Apple's counterclaims allege facts
6 sufficient to support a plausible claim for monopolization
7 under Section 2 of the Sherman Act.

8 For the reasons stated, the Court will deny
9 Nokia's motion to dismiss.

10 That is the Court's ruling, counsel.

11 That leaves, then, in my view -- and I am
12 willing to discuss this with a somewhat open mind -- the
13 possible need to revisit the ordering of things. We
14 discussed this extensively at our first visit, at the
15 scheduling conference.

16 Who wants to go first?

17 MR. LEE: Your Honor, it's Bill Lee.

18 THE COURT: Mr. Lee, I might have known you
19 would jump into the breach right away.

20 MR. LEE: I apologize. I missed the conference
21 at which Mr. Quarles appeared because I was in trial before
22 Judge Bonares (phonetic).

23 I think Mr. Quarles at least reported to me he
24 argued extensively but unsuccessfully to have the contract
25 claims litigated first. Without being redundant, I would

1 say that we still think that is the right way to do it. We
2 actually think if there were discovery and a trial on the
3 contract claims, that that actually may be the most likely
4 mechanism to resolve all of the patent claims before Your
5 Honor. There are now two competing cases of Internet and
6 Trade Commission. Nokia started another patent case against
7 Apple in the Western District of Wisconsin.

8 I think -- and I know Mr. Flinn may disagree --
9 but I think that if we could litigate the contract claim,
10 which is, there is a contract, there is a license, has there
11 been a breach because the offer is not FRAND, has the best
12 chance of getting the parties to ultimate resolution.

13 The only other point I will make, Your Honor,
14 is that it really would avoid a lot of duplication and a lot
15 of extra effort if we can litigate the contract claims
16 first. If it can resolve the case, there will never be the
17 need to impose upon, frankly, the Court's resources to
18 decide ten patents, nor will the parties have to litigate
19 ten patents. And these ten patents are just ten of
20 thousands that might be litigated, which I think no one
21 hopes will happen. The contract claim and the resolution of
22 that has the prospect of resolving the dispute as to all of
23 them.

24 THE COURT: Thank you, Mr. Lee.

25 Who would care to respond on behalf of Nokia?

1 MR. FLINN: Good afternoon, Your Honor. This is
2 Patrick Flinn from Alston & Bird.

3 THE COURT: Good afternoon.

4 MR. FLINN: Good afternoon.

5 It is nice to have Mr. Lee with us. We did miss
6 him the last time we were in Delaware.

7 But let me say that beyond Mr. Lee's presence,
8 nothing really has changed from the schedule that the Court
9 set in our prior meeting. The schedule was set with the
10 assumption that the nonpatent claims would, in fact, be in
11 the case. And the fact that they are now confirmed to be in
12 the case I don't think causes much reason to revisit the
13 schedule.

14 And I do have to respectfully disagree with Mr.
15 Lee's suggestion that somehow litigating ten patents is
16 simpler than litigating the contract FRAND issue, because
17 that is going to require determining the fair, reasonable,
18 and nondiscriminatory rates for not ten patents but for the
19 several hundred patents that are in Nokia's portfolio.

20 The license dispute that gives rise to Apple's
21 breach of contract claim is one that is not limited to the
22 ten patents that are the subject of Nokia's original
23 infringement claims that started this litigation.

24 The contract claims broadly and significantly
25 opened the scope of the case from the simple ten patent

1 infringement claims that were originally brought.

2 So I don't think that it is going to be any
3 simpler to do the contract case first. It is going to be
4 much more significant to have to deal with the entire
5 portfolio and structure it that way.

6 The only other fact that I think counsel --
7 another fact that I believe counsel is against changing the
8 schedule that had been previously agreed is that now that
9 the pleadings on the counterclaim have been resolved and we
10 know what is at stake, Nokia will have to look at what
11 nonpatent claims it wants to bring, and their schedule
12 permits amendment, the commonplace amendment of Nokia's
13 pleadings in light of the presence of the nonpatent claims
14 in here.

15 So it is possible -- and it hasn't been
16 confirmed -- but it is possible that there will be nonpatent
17 claims, including contract claims, that Nokia will assert,
18 that will further make it more complicated to adjudicate
19 them first.

20 So I think, in summary, our view is that the
21 circumstances and structure of this case remains unchanged,
22 notwithstanding the Court's ruling, and if anything, the
23 reasons for the Court doing the patent issues first, as of
24 right now the simplest issues if the case, I think, remain
25 the persuasive ones.

1 THE COURT: Mr. Flinn -- I know we talked about
2 this at the 16 conference. I will give Mr. Lee a chance to
3 respond -- but could you revisit the point that was made I
4 think in the joint status report, where I think it was --
5 and I haven't had a chance to review it comprehensively --
6 there was mention made of a similar case and an approach
7 taken by another District Judge wherein the contract matter
8 was positioned first and it resulted in a relatively prompt
9 resolution of the action. I am just not sure if it was by
10 way of settlement or not.

11 MR. FLINN: That was, I believe, the
12 Samsung/Ericsson case. I think it was significantly
13 different factually and procedurally from the situation we
14 are in right now. And it did not involve the situation
15 where we have a lawsuit started simply on the infringement
16 of ten patents and then the defendant wanting to change the
17 subject to talk about what the value of an entire portfolio
18 of several hundred patents is worth and wanting that
19 resolved first.

20 The fact is that the ten patents are the only
21 patents that Nokia seeks to litigate in this case at this
22 point. And to the extent that we are going to add anything
23 else, it will be noncontract claims, and possibly even an
24 explicit breach of contract against Apple. Now that Apple
25 has pled the existence of the contract, we believe that it

1 has contractual obligations that it has not fulfilled. But
2 that again is likely to a much broader, more factually
3 complex case than ours.

4 THE COURT: Thank you.

5 Mr. Lee, could you address in reverse order the
6 assertion just made by Mr. Flinn that if Nokia elects to
7 amend, seeks to amend, and brings in its own claims of
8 breach of contract or failure to follow FRAND, that it will
9 at least potentially significantly complicate matters, and
10 then move on.

11 MR. LEE: Yes. Your Honor, I don't think that
12 is correct. I am not quite sure what the claim is going to
13 be from them on our breach of contract. But I can say these
14 two things on that for sure.

15 One is, Your Honor, if we breach the contract to
16 them and they breach the contract to us, or there is
17 allegations of that, they are all arising from the same set
18 of contacts. They are arising from the same interactions
19 that were spurred by Nokia's contact with us in 2007 when
20 the iPhone launched.

21 The second is, both claims of breach of contract
22 will be resolved by what is an appropriate FRAND rate and
23 whether offered. So there is going to be a common set of
24 facts. The fact of the matter is the parties only met a
25 half-dozen times. It's not going to be quite as expansive,

1 I think, as Mr. Flinn suggests. Ultimately, the question of
2 whether there has been a FRAND offer and what is a FRAND
3 rate will resolve both of them.

4 The second is, I think the Eastern District of
5 Texas case is, in fact, quite analogous, and was we think
6 correct, because it recognized that resolving the FRAND
7 issue was likely to resolve the entire worldwide dispute for
8 the entire portfolio. And it did resolve it.

9 The interesting thing, Your Honor, is that -- I
10 can't remember which judge did it in Texas. But in the
11 opinion, he relied in part upon Vice Chancellor Strine. The
12 opinion that they relied upon from Vice Chancellor Strine
13 was in the Qualcomm-Nokia case, where Nokia was advocating
14 precisely the position I am advocating now, which is:
15 Resolve the contract issue, and that will resolve the
16 dispute.

17 The last point, Your Honor, is something has
18 changed beyond the fact I have finished another trial and I
19 am here and Mr. Quarles isn't. That is, Nokia has sued
20 Apple in Wisconsin, opening up yet another forum, five more
21 patents, part of the portfolio. And it's the best
22 indication that we would urge the Court to help us find a
23 way to resolve all of this. Otherwise, we are going to have
24 iterative patent cases one after another.

25 The fact of the matter is, if we litigate the

1 ten patents before Your Honor, we have this massive Markman
2 hearing, a 15-day trial, and the issue is resolved and some
3 of the patents are valid and infringed, we are still going
4 to have to decide the contract claim, because they claim
5 that these patents are essential. We claim, then, that we
6 get a FRAND rate. We are still going to have to resolve the
7 contract claims.

8 The contract claim is the one claim that has the
9 prospect -- or it's the best claim that has the prospect of
10 taking all of these cases in all of these venues and
11 resolving it once and for all, or at least giving the
12 parties the incentive, a decision has been made, to go off
13 and reach a reasonable resolution.

14 THE COURT: Okay. This is the problem with good
15 lawyers.

16 Well, well argued on both sides.

17 Mr. Flinn, did you have anything else you wanted
18 to add.

19 MR. FLINN: Very briefly, Your Honor. I
20 appreciate your patience on this.

21 Mr. Lee mentioned the Wisconsin case, and
22 suggested that it, in fact, implicates FRAND issues. It
23 does not. The patents that are at issue in the Wisconsin
24 case aren't subject to a FRAND obligation. They have not
25 been declared essential to any SSO, they are not asserted to

1 be essential to any SSO. So they are in the same category
2 of patents that Apple has sued Nokia for infringing and
3 brought the ITC actions that Apple has brought against
4 Nokia.

5 The other point that I wanted to make that was
6 also made previously in our in-person hearing but is worth
7 revisiting, there are significant problems with adjudicating
8 the FRAND contract claim beyond simply the several hundred
9 U.S. patents that are at stake in this case. We have
10 several hundred foreign patents that are part of the
11 portfolio that Mr. Lee, I think, would like the Court to
12 rule on what the value of those patents is, in terms of a
13 fair, reasonable, and nondiscriminatory rate.

14 The other thing that I think will become clear
15 when we plead, as I expect we will but I can't be sure, our
16 contract claim, we believe that the contract arises once a
17 party starts to use the technology claimed in an essential
18 patent.

19 Thus, we think that it is going to be
20 impossible to adjudicate the FRAND contract issue without
21 knowing which patents Apple actually uses. And for ten
22 patents, that is going to be complicated enough, but for
23 several hundred U.S. patents, and I don't even know how we
24 are going to deal with the foreign patents, it becomes
25 nearly nightmarish.

1 THE COURT: Mr. Lee, Mr. Flinn has injected some
2 new matter. Do you care to react to it?

3 MR. LEE: Yes. I would just say two things,
4 Your Honor.

5 I think that the idea that the contract arises
6 only when you use the technology is not correct. A contract
7 that we are the beneficiary of is the contract they made
8 with the standard-setting organizations. And we are the
9 beneficiary to that contract.

10 One of the cases that the Third Circuit cited in
11 the Broadcom appeal was a case that came out of San Diego,
12 that we actually tried, that involved these issues. And
13 it's relevant in two respects according to what Mr. Flinn
14 described.

15 First, in that case Qualcomm declared the
16 patents essential after the litigation had commenced. So
17 the mere fact that they may or may not have made the
18 disclosures now doesn't tell us whether they claim they are
19 essential or not. In fact, Nokia has made declarations of
20 essentiality years after the standard has been adopted.

21 So I don't think that tells us much about
22 Wisconsin.

23 The second thing, Your Honor, is a contract
24 arises at the time that they participate in the standard
25 organization. We are at least a third-party beneficiary to

1 that, which is in part what came out of the San Diego
2 decision. On that issue I just disagree with Mr. Flinn.
3 And I continue to believe that we could have a five-day
4 trial, as Your Honor planned, on the contract claim, and the
5 likelihood is we would never need the second or third trial.

6 THE COURT: Okay. Let me ask this of both
7 counsel. I would like to give this some further thought, is
8 where I think I am going to end this. Would it be as simple
9 if I were of a mind to reorder things, could it be as
10 simple, counsel, in your view, given how far out the trials
11 are in this matter and the due date for the pretrial
12 conference and the due date for the proposed pretrial order,
13 as simply reordering -- and this is what I have on my
14 mind -- repositioning the patent and contract, flipping
15 them, having them change positions, with the contract matter
16 going first and the patent matter going second?

17 MR. LEE: Your Honor, I think from Apple's point
18 of view, the answer is yes.

19 THE COURT: And it wouldn't affect discovery or
20 anything of that nature, the manner in which discovery is
21 proceeding?

22 MR. LEE: I think that's right.

23 THE COURT: We are not talking about -- at this
24 juncture, I think the order reflects that there is not going
25 to be 56 practice. So it wouldn't affect that in any way.

1 Right?

2 MR. LEE: Right.

3 THE COURT: Mr. Flinn.

4 MR. FLINN: Well, one of the things, Your Honor,
5 that I think is going to be -- potentially make it hard
6 simply to do the flipping is that it's pretty clear just
7 from this call that Mr. Lee and I are not going to agree on
8 some kind of very basic things about this contract, like
9 what creates it, what the obligations of the contract are,
10 and the like.

11 It's a contract that actually arises out of
12 French law, we believe, because the organization, the
13 standards-setting organization in question for at least the
14 telecom patents is a French entity called ETSE (phonetic).
15 We believe, the French law makes clear that use of the
16 patents is what triggers some contractual obligations.

17 We don't think there is an obligation, if
18 somebody is simply out walking down the street, that they
19 had a license to Nokia's patents. They have to actually use
20 the technology to get a license to the patent and be
21 obligated to pay royalties on it.

22 So we are going to have to sort out that basic
23 legal framework. And I think it's going to be hotly
24 contested. The scope of what comes into the case is going
25 to turn on that.

1 If Mr. Lee is right that the only issue is what
2 offer was made and rejected two or three times over the
3 course of the negotiating history, that's one thing. But we
4 don't think that's the contract that exists. We think the
5 contract is not as simple as that.

6 THE COURT: Pardon the interruption, Mr. Flinn.
7 Isn't that going to be the issue whether we try the contract
8 case on May the 21st or the patent case on June the 18th?
9 Those issues are still going to be extant, aren't they?

10 MR. FLINN: They are going to get -- we are
11 going to make more progress on them if we try the patent
12 case first, because at least we are going to know whether or
13 not there is, in fact, an obligation at all, because if we
14 are correct in showing that the patents are essential and if
15 we are correct in showing that they are used, we at least
16 have something concrete in terms of what to value for
17 purposes of what the FRAND contract requires.

18 THE COURT: Will the patent litigation establish
19 essentiality?

20 MR. FLINN: Absolutely. Absolutely. We are
21 going to read the patents on the standard, and we are going
22 to show that Apple complies with the standard. And that is
23 going to show essentiality. And then the question is what
24 is a fair, reasonable, and nondiscriminatory rate.

25 THE COURT: Mr. Lee.

1 MR. LEE: Your Honor, two things.

2 It may establish essentiality for some portion
3 of the ten, but it still leaves the portfolio. I think what
4 neither of us has said, which may be the most important
5 thing to tell Your Honor, is these licenses, when they get
6 granted, even if they are resolving, for instance, the
7 Qualcomm-Nokia fight, are portfolio licenses. No one is
8 going through and saying, well, this patent in Israel is
9 worth this, this patent in Germany is worth this, this
10 patent in the U.S. is worth that.

11 There are portfolio licenses that cover the
12 entire portfolio. And the question is, what is the FRAND
13 offer and what is the FRAND rate for that portfolio? That
14 is just a matter of expert testimony that Your Honor could
15 hear in a couple of days and would resolve everything.

16 If we followed Mr. Flinn's procedure to its
17 logical conclusion, we would have a trial on ten patents.
18 Some portion of them might be infringed. We then have to
19 move to whether there was a contractual obligation to offer
20 FRAND, whether it was. And then, having had that decided,
21 we could move on to the next portion of the portfolio.

22 But Nokia and Apple, without violating the NDA,
23 have always discussed this as a portfolio licensing matter.
24 And, in fact, that is what Nokia did with Qualcomm and how
25 they resolved it. And that's what Nokia urged on Magistrate

1 Judge Strine.

2 THE COURT: You mean Vice Chancellor Strine?

3 MR. LEE: Yes. Vice Chancellor Strine. I got
4 it wrong. I apologize.

5 I think, to be quite honest, one of the reasons
6 that I think Nokia would like to put the contract claim off
7 is that on certainly the key issues that we have been
8 arguing today, they have said the exact opposite. To take
9 the positions they are going to take is hard because of what
10 happened in the other case. That is why we would have the
11 trial.

12 THE COURT: Does anyone have the cite to the
13 Eastern District of Texas case off the top of your heads? I
14 don't remember where I saw it. I was thumbing through the
15 joint status report. I don't think it's actually there.

16 MR. FLINN: Your Honor, we can track it down and
17 get it to the Court. I will point out that I think there
18 were a number of lawsuits pending in different fora at the
19 same time. We don't really know why they settled. But we
20 know there was a District Court case, there were ITC cases.

21 We can track down the citation and forward that
22 to the Court.

23 THE COURT: Did the judge in that case explain
24 his reasoning for the manner in which he managed that case?

25 MR. FLINN: I don't believe that there is

1 anything significant about the reasoning. But whatever
2 there is, Judge, we will find it and get it to you.

3 THE COURT: All right. Thank you.

4 Let me consider this. I don't think my leaving
5 things status quo, moving along as I have already ordered,
6 interferes with progress in any way.

7 Does it, in your view, Mr. Lee?

8 MR. LEE: It does not, Your Honor.

9 THE COURT: Mr. Flinn?

10 MR. FLINN: I agree, Your Honor.

11 THE COURT: All right, gentlemen. Thanks for
12 your time. And take care.

13 (Counsel respond "Thank you.")

14 (Conference concluded at 2:36 p.m.)

15 - - -

16 Reporter: Kevin Maurer

17

18

19

20

21

22

23

24

25